



A Report: War Crimes Committed Against U.S. Military Personnel, June 8, 1967

Submitted to the Secretary of the Army in
his capacity as Executive Agent for the
Secretary of Defense, June 8, 2005.

This report of war crimes committed against U.S. military personnel is submitted to the Honorable Secretary of the Army in his capacity as Executive Agent for the Secretary of Defense, pursuant to Department of Defense Directive Number 5810.01B (29 March 2004) ¹.

¹ CJCSI 5810.01B (29 March 2004) provides in relevant part, attached as Exhibit 1:

1. Purpose. Pursuant to the authorities delegated in references a and b, *this instruction establishes joint policy, assigns responsibilities, and provides guidance regarding the law of war obligations of the United States.* Reference a provides policy guidance and assigns responsibility within the Department of Defense for a program to ensure compliance with the law of war. . . .

4. Policy

a. *The Armed Forces of the United States will comply with the law of war during all armed conflicts, however such conflicts are characterized, and, unless otherwise directed by competent authorities, the US Armed Forces will comply with the principles and spirit of the law of war during all other operations. Specifically, reference A provides that it is the policy of the Department of Defense to ensure that:*

- (1) The law of war obligations of the US Government are observed and enforced by the US Armed Forces.
- (2) *An effective program designed to prevent violations of the law of war is implemented by the US Armed Forces.*
- (3) *All reportable incidents committed by or against members of (or persons serving with or accompanying) the US Armed Forces are promptly reported, thoroughly investigated and, where appropriate, remedied by corrective action.*

5. Definitions

- b. Reportable Incident. A possible, suspected, or alleged violation of the law of war.

7. Reporting Requirements

c. Investigation. Commanders of combatant commands will establish procedures for receiving initial reports of reportable incidents, and will ensure that their subordinate commanders:

- (1) Submit a report, by the most expeditious means available, . . .
- (2) *Initiate an investigation by an appropriate military investigative authority in accordance with subparagraphs 3f(2) and 3f(4) of Enclosure A.*

d. The responsible combatant commander will submit a message report, as expeditiously as possible, for all reportable incidents to the Joint Staff . . . , The Office of the Secretary of Defense. . . . , and the Secretary of the Army . . . , in the Secretary's capacity as Executive Agent under paragraph 5.6 of reference a.

Enclosure A:

3. The commanders of combatant commands are responsible for the overall execution of the DOD Law of War Program within their respective commands. Specific responsibilities include ensuring:

f. *All appropriate policies, directives, and operation and concept plans incorporate the reporting and investigation requirements established by reference a and this instruction, and by the Secretary of the Army, who is designated by reference a as the DOD Executive Agent for the administration of the DOD Law of War Program with respect to investigating and reporting reportable incidents.*

(2) *Ensure, via appropriate command directives, that all reportable incidents committed by or against members of (or persons serving with or accompanying) US Armed Forces are reported promptly to appropriate*

This Report is filed by the USS *Liberty* Veterans Association, Inc. a California non-profit corporation, recognized by the Internal Revenue Service as a Section 501(c)(3) tax exempt veterans organization, acting on behalf of the surviving crewmembers of USS Liberty.

BACKGROUND

On June 8, 1967 while patrolling in international waters² in the Eastern Mediterranean Sea, USS *Liberty* (AGTR-5) was savagely attacked without warning or justification by air and naval forces of the state of Israel.³

Of a crew of 294 officers and men⁴ (including three civilians)⁵, the ship suffered thirty four (34) killed in action and one hundred seventy three (173) wounded in action.⁶ The ship itself, a Forty Million (\$40,000,000) Dollar state of the art signals intelligence

authorities, are thoroughly investigated, and the results of such investigations are promptly forwarded to the applicable Military Department or other appropriate authorities. Applicable directives will include specific guidance on the collection and preservation of evidence of reportable incidents committed by enemy forces against US personnel since such evidence may serve as the basis for a possible future trial of accused war criminals. . . . [Emphasis added]

² See, *IDF History Report*, p. 14, (attached as Exhibit 2-14) is a map generated by the Israeli Defense Forces and show both the limit of territorial waters and the track of USS *Liberty*

³ Memo from Presidential Counselor Clark Clifford to President Johnson, dated July 18, 1967, titled *The Israeli Attack on the USS Liberty* (the "Clifford Report"), Exhibit 3:

"a. At all times prior to, during, and following the attack, the *Liberty* was in international waters where she had every right to be. As a noncombatant neutral vessel she maintained the impartial attitude of neutrality at all times prior to the attack."

⁴ *Attack on a SIGINT Collector*, p.2 (photo caption), Exhibit 4-2:

"The U.S.S. *Liberty* was commissioned in May 1945 as a victory ship and later converted into a technical research ship (December 1964). She had an overall length of 455 feet. a maximum speed of 18 knots with an allowable personnel complement of 9 officers and 151 enlisted men along with an additional 6 officers and 128 enlisted men from the Naval Security Group."

⁵ *Attack on a SIGINT Collector*, Exhibit 4-17 :

"Six Arabic linguists [redacted] joined USN-855 for the expected work on U.A.R. and [redacted] communications. Three of the Arab linguists, NSA civilians Allen M. Blue, Donald L. Blalock, and Robert L. Wilson, were among the specialists who came on board [redacted]."

⁶ See, Navy Court of Inquiry Transcript, Exhibits 20 through 22 (attached as Exhibits 5, 6, and 7). While the number of those killed in action (KIA) remains at 34, the number of those wounded in action (WIA) has risen to 173 as the result of additional crewmembers being awarded Purple Hearts after the conclusion of the NCOI.

(SIGINT) platform, was so badly damaged that it never sailed on an operational mission again and was sold in 1970 for \$101,666.66 as scrap⁷.

Israel acknowledged the following facts without qualification:

- a. USS *Liberty* was an American ship, hence a neutral *vis-à-vis* the June 1967 war between Israel and its Arab neighbors.⁸
- b. USS *Liberty* remained in international waters at all times on June 8, 1967⁹.
- c. The attacking Israeli forces never made a positive identification of the nationality of USS *Liberty* before unleashing deadly force in their attack on the ship.¹⁰

At approximately 0600 hours (all times local) on the morning of June 8, 1967 an Israeli maritime reconnaissance aircraft observer reported seeing "a US Navy cargo type ship," just outside the coverage of the Israeli coastal radar defense net, bearing the hull markings "GTR-5".¹¹ This report, made to Israeli naval HQ, was also forwarded immediately to the Israeli navy intelligence directorate.¹²

⁷ *Attack on a SIGINT Collector*, Exhibit 4-64

"... *Liberty* was decommissioned on 28 June 1968. In 1970 the ship was turned over to the Maritime Administration and sold for scrap for \$101,666.66."

⁸ *Ram Ron Report*, p. 3, Exhibit 8-3

"After identifying the ship on Janes' (The Fleet's manual – Exhibit 1) and based on detailed investigation by the pilot – the identification of the ship was determined to be the US Navy ship "Liberty" (formerly supply ship) of an 18 knot speed."

⁹ *IDF History Report*, Exhibit 2-14. This document is a map, prepared by the IDF, that shows the territorial limits of Egypt and Israel, as well as USS *Liberty*'s track (well outside all claimed territorial seas) on the day of June 8, 1967. Exhibit 2-14

¹⁰ *Attack on a SIGINT Collector*, quoting the charges filed by the Israeli Chief Military Prosecutor, specifically, Charges 4 and 5 Exhibit 4-39:

4. Charge: That the Naval Department's order not to attack the ship (the *Liberty*), "for fear of error and out of uncertainty with regard to the true identity of the ship," was not delivered to the torpedo boat division.

5. Charge: That it was negligence to give the order to attack a warship without previously establishing, beyond doubt, its national identity and without taking into account the presence of the American Ship, *Liberty*, in the vicinity of the coast of Israel."

¹¹ *IDF History Report*, Exhibit 2-678:

"The [Israeli maritime reconnaissance aircraft] patrol's mission was to detect ship movements before vessels could enter coastal radar detection range."

Throughout the remainder of the day prior to the attack, Israeli reconnaissance aircraft regularly flew out to USS *Liberty*'s position and orbited the ship before returning to their bases in Israel. A total of no fewer than eight (8) such flights were made.¹³

At approximately 1050 hours, the naval observer from the early morning reconnaissance flight arrived at Israeli air force HQ and sat down with the air-naval liaison officer there. The two officers consulted *Janes' Fighting Ships* and learned that the ship reported earlier in the day was USS *Liberty*, a United States Navy technical research ship.¹⁴

From 0900 hours on June 8, 1967, until the time of the attack five hours later, USS *Liberty* maintained a speed of approximately five knots and a generally westerly-northwesterly course.¹⁵

...
Meanwhile, the "Nord" plane which had been patrolling the sea had landed and [at 1050 hours local time] the observer was debriefed by Lt. Commander Pinchasi, a navy representative at Air Command. The observer reported spotting the marking GTR-5 on the ship's side. Lt. Commander Pinchasi checked the marking in a "Janes" manual and learned that the reference was to an intelligence ship named "Liberty."

¹² *IDF History Report*, Exhibit 2-8:

"He [Pinchasi] reported the information to Naval Operations Section/3 and since the reference was to an intelligence ship he likewise reported to Naval Operations Section/4 (intelligence).

¹³ Memorandum from Carl F. Salans, Department of State Legal Advisor to the Undersecretary of State, dated September 21, 1967 and titled: *The Liberty -- Discrepancies Between Israeli Inquiry and U.S. Navy Inquiry* (the "Salans Report"), Exhibit 9:

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"II. Aircraft Surveillance

The Israeli report indicates that a ship was reported in the area by reconnaissance aircraft at 0600 and that another report was received of a contact between an Israeli aircraft and a surface vessel about 0900.

The Navy Court finding of facts, plus testimony of various members of the crew indicate reconnaissance overflights of the Liberty at 0515, 0850, 1030, 1056, 1126, 1145, 1220, and 1245." [all times local]

¹⁴ *IDF History Report*, Exhibit 2-8:

"Lt. Commander Pinchasi checked the marking in a "Janes" manual and learned that the reference was to an intelligence ship named "Liberty."

¹⁵ *IDF History Report*, (map), Exhibit 2-14:

At 1400 hours, while approximately 17 miles off the Gaza coast, USS *Liberty*'s crew observed three surface radar contacts closing with their position at high speed. A few moments later, the bridge radar crew observed high speed aircraft passing over the surface returns on the same heading.¹⁶

Within a few short moments, and without any warning, Israeli fighter aircraft launched a rocket attack on USS *Liberty*. The aircraft made repeated firing passes, attacking USS *Liberty* with rockets and their internal cannons. After the first flight of fighter aircraft had exhausted their ordnance, subsequent flights of Israeli fighter aircraft continued to prosecute the attack with rockets, cannon fire, and napalm. ¹⁷

During the air attack, USS *Liberty*'s crew had difficulty contacting Sixth Fleet to request assistance due to intense communications jamming¹⁸

The initial targets on the ship were the command bridge, communications antennas, and the four .50 caliber machine guns, placed on the ship to repel boarders.¹⁹

¹⁶ *Attack on a SIGINT Collector*, Exhibit 4-26:

"The relative bearing of this plane was about 135°, its position angle was about 45°-50°, its elevation approximately 7,000 feet, and it was approximately five to six miles from the ship."

. . .

"At about 1424 hours, look-outs sighted three high-speed boats approaching the Liberty from he northeast on a relative bearing of approximately 135° at a distance of about 15 miles."

¹⁷ *Attack on a SIGINT Collector*, Exhibit 4-28:

"The coordinated strafing, rocket, and incendiary air attacks created three major fires topside that covered large areas of the Liberty with flames and heavy smoke."

¹⁸ *Attack on a SIGINT Collector*, Exhibit 4-26:

"At the same time, he ordered Lieutenant Maurice H. Bennett to report to the Chief of Naval Operations (CNO) via the high-command radio circuit (hicom) that the Liberty was under attack by unidentified jet aircraft and required immediate assistance This Flash message, giving the *Liberty*'s position as 33-25E, 31-23N, was received by the aircraft carrier U.S.S. *Saratoga* (CVA-60) and relayed to Commander, U.S. Naval Forces Europe; Commander, Sixth Fleet; and Commander, Task Force 60 (CTF 60). *Liberty*'s transmission was not made without difficulty. During the attack and intermittently thereafter, the hicom voice circuit was subjected to loud jamming regardless of frequency. This electronic interference was described as a steady carrier without modulation."

¹⁹ *Attack on a SIGINT Collector*, Exhibit 4-28:

"Eight men were killed or died of injuries received during the air attack: two killed or mortally wounded on the bridge, two killed at machine gun 51, one killed at machine gun 52, one died from wounds received on the main deck starboard side, and two died of wounds received on the 01 level portside. Throughout the topside area, 75 men had been wounded by shrapnel and shock of exploding rockets."

After the Israeli fighter aircraft completed their attacks, three Israeli torpedo boats arrived and began a surface attack about 35 minutes after the start of the air attack. The torpedo boats launched a total of five torpedoes, one of which struck the side of USS *Liberty*, opposite the ship's research spaces.²⁰ Twenty-six Americans, in addition to the eight who had been killed in the earlier air attacks, were killed as a result of this explosion.

Following their torpedo attack, the torpedo boats moved up and down the length of the ship (both the port and starboard sides), continuing their attack, raking the ship with cannon and machine gun fire.²¹ In Malta, crewmen were later assigned the task of counting all of the holes in the ship that were the size of a man's hand or larger. They found a total of 861 such holes, in addition to "thousands" of .50 caliber machine gun holes.

Survivors report that the torpedo boat crews swept the decks of USS *Liberty* with continuous machine gun fire, targeting communications equipment and any crewmembers who ventured above decks.²²

²⁰ *Attack on a SIGINT Collector*, Exhibit 4-28:

"At this time, the motor torpedo boats opened fire with their gun mounts, killing the Liberty's helmsman. In a matter of seconds one torpedo crossed astern of the ship at about 25 yards. The time was then 1434 hours. A minute later, a second torpedo struck the ship on the starboard side, just forward of the bridge and a few feet below the water line."

²¹ See statement of Lloyd Painter, Exhibit 10, and statement of Glenn Oliphant Exhibit 11.

²² See statement of Lloyd Painter, Exhibit 10, and statement of Glenn Oliphant Exhibit 11.

Statement of survivor Glenn Oliphant, Exhibit 11.

"Shortly after the torpedo hit, the order was received to abandon ship. I proceeded to the outside hatch in the radio transmitter room and undogged the door. . . .

When I got on deck I looked forward and discovered that the rack that held my life raft and all the life rafts had been consumed by fire. I then went to the starboard side of the ship and found injured men coming up from the messdecks to the main deck. I assisted several of them and within minutes shells and shrapnel were flying everywhere coming from the torpedo boats. The order was given to return to the mess decks."

Damage control firefighters, who had already risked their lives merely by appearing on deck, had to abandon their efforts because their fire hoses had been shredded by machine gun fire.²³

Survivors also report that the torpedo boat crews fired on the inflated life boats launched by the crew after the captain gave the order "prepare to abandon ship."²⁴ This order had to be rescinded because the crew was unable to stand on the main deck without being fired upon and the life rafts were destroyed as they were launched.²⁵

The defenseless crew, initially unable to report their plight or summon assistance and with only themselves to rely upon, fought heroically to save themselves and their ship. In recognition of their effort in this single action, they were ultimately awarded, collectively, one Medal of Honor, two Navy Crosses, eleven Silver Stars, twenty Bronze Stars (with "V" device), nine Navy Commendation Medals, and two hundred and four Purple Hearts. In addition, the ship was awarded the Presidential Unit Citation.

By patching together different systems, the ship's radio operators had ultimately been able to send a brief distress message that was received and acknowledged by United States Sixth Fleet forces present in the Mediterranean.²⁶ Upon receipt of that

²³ Statement of survivor James M. Ennes, Jr., Exhibit 12.

"Almost every man on that ship recalls -- as I personally recall very clearly from my position outside the wardroom -- that the torpedo boats then circled the ship for a long time firing at close range at anything that moved. Men trying to aid their wounded shipmates on deck were fired upon. Men fighting fires were fired upon and recall seeing their fire hoses punctured by machinegun fire. This went on for several minutes. At one point the boatmen concentrated their fire near the waterline amidships, presumably hoping to blow up the boilers to hasten our demise. Finally they pulled a distance back from the ship."

²⁴ Statement of survivor Glenn Oliphant: Exhibit 11.

"Shortly after the torpedo hit, the order was received to abandon ship."

²⁵ See statement of Lloyd Painter, Exhibit 10 and statement of Glenn Oliphant, Exhibit 11. Statement of survivor James M. Ennes, Jr., Exhibit 12.

²⁶ Exhibit 13:

081235Z
FM NJRS
TO CINCNAEUR
INFO BGOC

message the aircraft carriers USS Saratoga and USS America each launched aircraft to come to the aid of USS *Liberty*.²⁷ The reported attacking aircraft were declared hostile and the rescue aircraft were authorized to destroy them upon arrival.²⁸ The rules of engagement, authorizing destruction of the attackers, were transmitted to the rescue aircraft “in the clear” (*i.e.*, they were not encrypted).

Shortly after the Sixth Fleet transmission of the rules of engagement to its dispatched rescue aircraft, the Israeli torpedo boats suddenly broke off their attack and transmitted messages asking if USS *Liberty* required assistance.²⁹ At the same time, an

FOLLOWING RECEIVED FROM ROCKSTAR AM UNDER ATTACK MY POSIT 31-23N 33-25E HAVE BEEN HIT REQUEST IMMED ASSISTANCE

²⁷ Exhibit 14:

081250Z JUN 67
FM COMSIXTHFLT
TO USS SARATOGA
USS AMERICA
INFO CTF SIX ZERO
CTG SIX ZERO PT TWO
BT
C O N F I D E N T I A L
1. AMERICA LAUNCH FOUR ARMED A4'S TO PROCEED TO 31-23N 33-25E TO DEFEND USS LIBERTY WHO IS NOW UNDER ATTACK BY GUN BOATS. PROVIDE FIGHTER COVER AND TANKERS. RELIEVE ON STATION. SARATOGA LAUNCH FOUR ARMED A-1'S ASAP SAME MISSION.
GP-4
BT

²⁸ Exhibit 15:

081339Z. USS *Liberty* Incident.

1. IAW CINCUSNAVEUR inst P03611#SB forces attacking *Liberty* are declared hostile.
2. You are authorized to use force including destruction as necessary to control the situation. Do not use more force than required, do not pursue any unit towards land for reprisal purposes. Purpose of counterattack is to protect *Liberty* only.
3. Brief all pilots contents this msg.
4. In addition brief pilots that Egyptian territorial limit only 12 miles and *Liberty* right on edge. Do not fly between *Liberty* and shoreline except as required to carry out provisions para 2 above. Brief fighter cover that any attacks on attack aircraft, *Liberty* or they themselves is hostile act and para two above applies.

²⁹ *Attack on a SIGINT Collector*, Exhibit 4-30

“One of the boats signaled by flashing light, in English, “Do you require assistance?” Not being able to signal by light, Commander McGonagle ordered a signalman to hoist the international flag signal for “not under command,” meaning that the ship was maneuvering with difficulty and that they should keep clear.”

Israeli naval officer notified the US Naval Attaché at the American Embassy in Tel Aviv that Israeli forces had mistakenly attacked a United States Navy ship and apologized. The Naval Attaché notified the United States Sixth Fleet³⁰ and the rescue aircraft were recalled before they arrived at the scene of the attack.³¹

At about the same time as the cessation of the torpedo boat attack, Israeli attack helicopters arrived over the ship.³² Survivors report that the helicopters were packed with men in combat battle dress. The Captain of USS *Liberty* gave the order to “prepare to repel boarders”³³ but the helicopters departed without attempting to land their troops.³⁴

³⁰ Exhibit 16

Tel Aviv, June 8, 1967, 1414Z.
“0825. ALUSNA called to FLO to receive report. Israeli aircraft and MTB's erroneously attacked U.S. ship at 081200Z position 3125Z 33-33E. May be navy ship. IDF helicopters in rescue operations. No other info. Israelis send abject apologies and request info of other US ships near war zone coasts.”

³¹ Exhibit 17

081440Z JUN 67
FM COMSIXTHFLT
TO AMERICA/SARATOGA /CTF60/CTG60.2
CONFIDENTIAL
1. RECALL ALL STRIKES REPEAT RECALL ALL STRIKES

³² Statement of survivor Richard Carlson, Exhibit 18

“An officer comes in from outside. We can't go out there. They are shooting at anyone on deck and have shot up the life rafts. I hear the whirl of a helicopter. It passes by the porthole. Did I just see armed troops? Word is passed. “Prepare to repel boarders!””

³³ Statement of survivor James Kavanagh, Exhibit 19

“13. A few minutes later we were told to stand by to repel boarders. We received a few guns and waited patiently for the battle.”

Statement of survivor Richard Carlson, Exhibit 18

“An officer comes in from outside. We can't go out there. They are shooting at anyone on deck and have shot up the life rafts. I hear the whirl of a helicopter. It passes by the porthole. Did I just see armed troops? Word is passed. “Prepare to repel boarders!””

³⁴ *Attack on a SIGINT Collector*, Exhibit 4-30

“At about 1515 hours, two helicopters approached the Liberty and circled around the ship at a distance of about 100 yards. The Star of David insignia was clearly visible. One of the helicopters was numbered 04 or D4, the other 08 or DB. The helicopters departed, returned, and departed again.”

The official position of the United States of America concerning these events, as contained in a diplomatic note³⁵ by Secretary of State Rusk addressed to the Israeli Ambassador is set forth, in relevant part, below:

"Washington, June 10, 1967.

The Secretary of State presents his compliments to His Excellency the Ambassador of Israel and has the honor to refer to the Ambassador's Note of June 10, 1967 concerning the attack by Israeli aircraft and torpedo boats on the United States naval vessel U.S.S. *Liberty*,

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³⁵ Diplomatic Note From Secretary of State Rusk to the Israeli Ambassador, National Archives and Records Administration, RG 59, Central Files 1967-69, POL 27 ARAB-ISR., Exhibit 20

"Washington, June 10, 1967.

The Secretary of State presents his compliments to His Excellency the Ambassador of Israel and has the honor to refer to the Ambassador's Note of June 10, 1967 concerning the attack by Israeli aircraft and torpedo boats on the United States naval vessel U.S.S. *Liberty*, which was carried out at 1605 and 1625 hours local time. Respectively, on June 8, 1967 while the U.S.S. *Liberty* was engaged in peaceful activities in international waters.

At the time of the attack, the U.S.S. *Liberty* was flying the American flag and its identification was clearly indicated in large white letters and numerals on its hull. It was broad daylight and the weather conditions were excellent. Experience demonstrates that both the flag and the identification number of the vessel were readily visible from the air. At 1450 hours local time on June 8, 1967, two Israeli aircraft circled the U.S.S. *Liberty* three times, with the evident purpose of identifying the vessel. Accordingly there is every reason to believe that the U.S.S. *Liberty* was identified, or at least her nationality determined, by Israeli aircraft approximately one hour before the attack. In these circumstances, the later military attack by Israeli aircraft on the U.S.S. *Liberty* is quite literally incomprehensible. As a minimum, the attack must be condemned as an act of military recklessness reflecting wanton disregard for human life.

The subsequent attack by Israeli torpedo boats, substantially after the vessel was or should have been identified by Israeli military forces, manifests the same reckless disregard for human life. The silhouette and conduct of the U.S.S. *Liberty* readily distinguished it from any vessel that could have been considered as hostile. The U.S.S. *Liberty* was peacefully engaged, posed no threat whatsoever to the torpedo boats, and obviously carried no armament affording it a combat capability. It could and should have been scrutinized visually at close range before torpedoes were fired.

While the Ambassador of Israel has informed Secretary of State that "the Government of Israel is prepared to make amends for the tragic loss of life and material damage," the Secretary of State wishes to make clear that the United States Government expects the Government of Israel also to take the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a State. He wishes also to make clear that the United States Government expects the Government of Israel to issue instructions necessary to ensure that United States personnel and property will not again be endangered by the wrongful actions of Israeli military personnel.

The United States Government expects that the Government of Israel will provide compensation in accordance with international law to the extent that it is possible to compensate for the losses sustained in this tragic event. The Department of State will, in the near future, present to the Government of Israel a full monetary statement of its claim."

In these circumstances, the later military attack by Israeli aircraft on the U.S.S. *Liberty* is quite literally incomprehensible. As a minimum, the attack must be condemned as an act of military recklessness reflecting wanton disregard for human life.

The subsequent attack by Israeli torpedo boats, substantially after the vessel was or should have been identified by Israeli military forces, manifests the same reckless disregard for human life. . . . The U.S.S. *Liberty* was peacefully engaged, posed no threat whatsoever to the torpedo boats, and obviously carried no armament affording it a combat capability. It could and should have been scrutinized visually at close range before torpedoes were fired.

. . . the Secretary of State wishes to make clear that the United States Government expects the Government of Israel also to take the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a State."

There has been no statement in the last thirty-eight years by the United States government reversing or amending this formal position.

The Israeli Defense Forces Chief Military Prosecutor, immediately following the attack, filed formal charges recommending court martial proceedings against a number of Israeli military personnel.³⁶ Prior to the start of court martial proceedings, the IDF turned

³⁶ *Attack on a SIGINT Collector*, Exhibit 4-3839:

"Given below are the charges brought by the Chief Military Prosecutor together with the examining judge's findings.

1. Charge: The first charge related to the failure of the Acting Chief of Naval Operations to report to the Head of the Naval Department that the American ship, *Liberty*, was seen in the morning hours of the day of the incident sailing in the vicinity of the Israeli coast.

Finding: Though the Head of the Naval Department testified that he did not know of the *Liberty*'s presence in the area on the day of the incident, the Officer of the Watch at Navy Headquarters testified that the Head of the Naval Department was on the Navy Command Bridge when the Commanding Officer of the Navy ordered the marking (on the combat information center plot table) of the American supply ship changed to green (indicating a neutral vessel). Since the Acting Chief of Naval Operations was an eyewitness to the event, he concluded that the Head of the Naval Department did know about the presence of an American supply ship in the area. In view of this, the examining judge found no negligence on the part of the accused.

2. Charge: That the Acting Chief of Naval Operations failed to report to the Head of the Naval Department that the hull markings on the ship observed by one of the attacking aircraft were similar to those on the *Liberty*.

Finding: Witnesses testified that when the Naval Liaison Officer at the Air Force Headquarters telephoned the Naval Command Bridge about the hull markings and their similarity to those of the *Liberty*, the officer to whom he spoke repeated the message in a loud voice so that it was heard by all present on the Command Bridge including the Head of the Naval Department. The examining judge stated, therefore, that there was thus no reason to repeat to the Head of the Naval Department a fact that had been audibly announced to those present. The charge was dismissed.

3. Charge: That the Naval Liaison Officer at the Air Force Headquarters was negligent by not reporting to the Air Force the information about the presence of the *Liberty* in the area.

Finding: The examining judge considered this charge unfounded. The responsibility for the defense of Israel against enemy naval actions rests solely with the Navy. Even though Air Force Headquarters ordered the

the matter over to an examining judge to confirm that the prosecution should go forward. The examining judge disagreed with United States position that the attack was "an act of military recklessness reflecting wanton disregard for human life" and announced his finding that:

aircraft to attack, it was really an order issued by the Navy, passed on through Air Force Headquarters. The Naval Liaison Officer at the Air Force Headquarters was entitled to assume that the decision to attack was made after considering this report about the Liberty. There was no reason to feed the Air Force with information and considerations that did not concern it.

4. Charge: That the Naval Department's order not to attack the ship (the Liberty), "for fear of error and out of uncertainty with regard to the true identity of the ship," was not delivered to the torpedo boat division.

Finding: Though the torpedo boat division commander claimed he never received the message not to attack, the deputy commander of the boat testified that he had received the message and passed it on to the division commander. The examining judge believed that, in the heat of battle, it was possible that the message escaped the awareness of the division commander and, in any event, there was insufficient evidence to commit any accused person to trial.

5. Charge: That it was negligence to give the order to attack a warship without previously establishing, beyond doubt, its national identity and without taking into account the presence of the American Ship, Liberty, in the vicinity of the coast of Israel.

Finding: To the examining judge, there was no doubt that the dominant factors in the initial attack decision were the speed and course of the target. Those in command were entitled to assume that the reported speed (28 knots) of the ship was correct, within the usual limits of reasonable error of 10-15 percent, relying upon the existing means of determining the speed of the target. It was, therefore, concluded that this was a military vessel, and since the Liberty was classed as a cargo ship, there was no reason for surmising, in view of the speed, that the target could probably be the ship, Liberty. If one adds to this other factors such as the report of the shelling of the Al Arish coast for hours on end, the ship's course toward Port Said, the aircraft report that the target was a warship and carried no naval or other identification marks, and the ship's location close to shore in a battle zone, the cumulative effect negates any presumption whatsoever of a connection between the American supply ship and the target discovered by the torpedo boats. Thus, the examining judge concluded that the assumption it was an enemy ship was reasonable and that the order given to the aircraft to attack was justified.

6. Charge: That it was negligent to order the torpedo boat to attack the ship upon an unfounded presumption that it was an Egyptian warship, and this as a consequence of not taking reasonable steps to make proper identification.

Finding: The examining judge considered it noteworthy that the identification of the target as the El- Kasir was made both by the division commander and the commander of a second torpedo boat. Upon examining photos of the two ships, he was satisfied that a likeness existed between them, and that an error of identification was possible, especially when the identification was made while the ship was clouded in smoke. The Chief Military Prosecutor argued that this identification was unreasonable because it was inconceivable to think that this auxiliary ship El- Kasir could shell the Al Arish coast or that she could move at a speed of 28 knots. In reply, the examining judge said that it seemed reasonable to him that the El- Kasir might have been part of the vessels that shelled the coast and failed to get away from the area or that the ship had come to assist in the evacuation of Egyptian soldiers struggling away from areas occupied by Israeli forces. Further, the judge said that there was no doubt that the Liberty's refusal to identify herself to the torpedo boats contributed largely to the error of identification.

In summation, the judge concluded that in all the circumstances of the case the conduct of the naval officers concerned in the Liberty incident could not be considered unreasonable to an extent which would justify committal for trial."

"Yet I have not discovered any deviation from the standard of reasonable conduct which would justify the committal [sic] of anyone for trial."³⁷

As a result of this blanket absolution, no one in the Israeli government or military has received so much as a reprimand for their involvement in the attack,³⁸ much less

³⁷ Israel Defense Forces, Preliminary Inquiry File 1/67, Preliminary Inquiry (July 21, 1967), Exhibit 21:

DECISION

"For all my regret that our forces were involved in an incident with a vessel of a friendly state, and its sad outcome, I ought to put the behavior of each of the officers, who had any connection with the incident, to the test of the conduct of reasonable officers during wartime operations, when the naval arm of the Israel Defense Forces was confronted with maritime forces superior in numbers, and when all involved were conscious of the task before them --to protect the safety of Israel, to identify every enemy threatening from the sea, to attack it speedily and to destroy it. The criterion for reasonable conduct under these conditions may possibly differ from that in times of relative quiet. Indeed, whoever peruses the ample evidence presented to me, may conceivably draw some lesson regarding the relations between the two arms of the Israel Defense Forces, which were involved in the incident, and the operational procedures in times of war, particularly between the different branches of the Navy--but all this is certainly not within the scope of my inquiry. Yet I have not discovered any deviation from the standard of reasonable conduct which would justify the committal [sic] of anyone for trial. In view of what has been said above, I hold, that there is no sufficient amount of *prima facie* evidence, justifying committing anyone for trial."

³⁸ Telegram From the Department of State to the Embassy in Israel Exhibit 22

(Source: National Archives and Records Administration, RG 59, Central Files 1967-69, POL 27 ARAB-ISR. Secret; Exdis. Drafted by Lambrakis on August 30; cleared by Bahti, Wehmeyer, and Davies; and approved by Katzenbach.)

Washington, August 31, 1967, 2107Z.

30382. Subj: U.S.S. *Liberty*.

1. Under Secretary called in Charge Evron August 30 to comment on Israeli examining judge's report. Explained it has already been given on confidential basis to a few Congressional committees. Also, quite a few people in the USG had handled it, as it was received through more than one channel from GOI. At least its existence, and perhaps some of its substance, can be expected to leak out. It may then become necessary for US to publish the exchange of notes. We shall inform GOI in advance if that eventuality arises and will do any publishing in low-key. We have no desire to exacerbate the issue. If this procedure causes major problems for GOI now is the time to speak out. Some leakage has occurred already in this week's *Newsweek* magazine.

2. Evron said he would refer matter back to his government. He speculated it might be possible for his government to acquiesce in such publication of the notes, in which case it could be done jointly. He wished to express GOI's deep appreciation of restrained manner in which entire affair was handled by USG.

3. On substance of report, Under Secretary said he personally had been very surprised with the ending. Report was obviously candid since any such confusion could not possibly have been invented. Examining judge laid out point after point confirming negligence on part of various Israeli officials in affair, yet ended up finding no deviation from normal conduct. Surely, Under Secretary said, one cannot believe such conduct was consistent with normal Israeli practice and did not involve culpable negligence on part of officials involved.

4. Evron was subdued in manner and said there was little he could add. He had raised matter with GOI when in Israel in July and had spoken personally with COS Rabin. Rabin had stressed that investigation be-

the punishment demanded by the United States ("the United States Government expects the Government of Israel also to take the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a State").

Within 24 hours of the attack, the United States Navy convened a formal Court of Inquiry into that attack – a standard investigative procedure reserved for such serious events or circumstances. This procedure was unusual in only one respect – the President and members appointed to the Court of Inquiry by the Commander in Chief, U.S. Naval Forces, Europe (CINCUSNAVEUR), headquartered in London, were directed orally by the appointing authority to conduct and complete their investigative proceedings *within one week* – a most unusual requirement in light of the nature and magnitude of the events they were ordered to investigate.

Convening initially in London, the Court proceeded immediately to the Mediterranean and conducted its inquiry both aboard USS *Liberty* as she limped under escort to Malta, and in succeeding days as she lay in dry-dock there. Concluding their inquiries there, the President of the Court, with the Navy Judge Advocate General's Corps officer who had been appointed as Counsel to the Court, and with a Navy court reporter who had been assigned from the London headquarters to assist, returned to London on June 16, 1967 (eight days after the attack), with their results.

ing entrusted to impartial military judge, and COS would have to abide by judge's findings. Affair had obviously been very damaging for GOI, Evron continued, and everything will be done to avoid repetition of such incident if ever similar circumstances arose, which he devoutly hoped they would not.

5. Under Secretary reiterated his surprise at judge's findings though he assured Evron he did not intend publicly to express these personal conclusions. If GOI should ever decide to publish the report, he added, we would appreciate identification of *Liberty* as US communications ship, in keeping with manner in which it identified in our own public utterances.

6. Evron agreed this manner of identification should present no problem but thought GOI would not publish report at all.

Rusk"

At London, the Navy court reporter supervised the final production of a written record of the Court's proceedings and findings – a document over 600 typewritten pages in length. On the afternoon of June 17, 1967, that record of the Court's proceedings was delivered to the senior Navy Judge Advocate General's Corps officer on the CINCUSNAVEUR staff for his review and recommendation to the appointing authority concerning his required endorsement and action upon the Court's proceedings and record. The CINCUSNAVEUR Staff Judge Advocate thus charged with that review – in full compliance and accord with standard Navy requirements and practice – turned immediately to his detailed examination and consideration of the record. He continued that process steadily into the early morning hours of June 18, 1967, then after a four-hour rest break resumed his review at 6:00 AM on June 18th.

In the midforenoon of June 18th an emissary from his Commander, the appointing authority, appeared and inquired of the Staff Judge Advocate concerning the status of his review and when it might be expected to be completed. The Staff Judge Advocate advised that he had by then read only about a third of the record – that there were many clerical and typographical flaws in the record that should be remedied before it was formally forwarded to the high governmental authorities who undoubtedly awaited it – that, more importantly, the reviewer had not yet been able to find, in the parts of the record he had so far reviewed, testimony or other evidence to support some of the Court's stated conclusions – and that he could not yet estimate when he could complete his review and recommendations but was continuing to devote himself solely to that task.

The emissary from the appointing authority departed with that information, then returned about 20 minutes later with the message that CINCUSNAVEUR, the appointing authority, had directed him to come and get the Court's record from the Staff Judge Advocate and bring it back to the appointing authority. The Staff Judge Advocate accordingly surrendered the record to the emissary exactly as he had received it; he was nei-

ther then nor later asked for any of his work or opinions so far; and he had no further contact with the Court of Inquiry or its results at any time in his active Navy career.³⁹

The records of the Navy Department reveal that the written record of proceedings of the U.S. Navy Court of Inquiry into the Israeli attack upon USS *Liberty* was formally submitted by the President of the Court of Inquiry to CINCUSNAVEUR, the appointing authority, by a written letter dated 18 June 1967, the very day that the record had been withdrawn by the appointing authority from his Staff Judge Advocate. The written record also reveals that the appointing authority, on that same day, placed upon that record of the Court's proceedings, a five-page First Endorsement, transmitting that Record to the Judge Advocate General of the Navy in Washington as required by the Navy's investigative procedures.⁴⁰

Mr. Secretary, it is respectfully submitted that, even based solely upon the facts and circumstances outlined above, the Navy Court of Inquiry into the Israeli attack on USS *Liberty* – the sole official investigation by the United States Government into that attack – was deficient and prejudiced, even at its outset, by the unreasonable haste imposed informally by the appointing authority. In addition, the processing of that Court's hasty result was further compromised by its peremptory withdrawal from its initial and prescribed legal review in the field, and its hurried transmission to the seat of the U.S. Government under cover of a purported official endorsement that could not conceivably have been based upon even a cursory complete review of even the hasty work of the Navy Court of Inquiry. Inexplicably, the Court record was classified Top Secret⁴¹ and withheld from public scrutiny for many years.

³⁹ He was a few months later ordered back to Navy headquarters in Washington where he was first assigned as Special Counsel to the Secretary of the Navy, serving two successive Secretaries in that post – then to flag rank as the Deputy Judge Advocate General of the Navy – and ultimately retiring in 1975 after his final active-duty assignment as the Judge Advocate General of the Navy.

⁴⁰ Declaration of Merlin Staring, Rear Admiral, JAGC, USN (Ret), Exhibit 23

⁴¹ Exhibit 24

In addition to all of that, however, the Judge Advocate General's Corps officer who was appointed to serve as Counsel to the Navy Court of Inquiry – the officer charged with certifying the authenticity of the Court's record – has examined a copy of the record of that Court of Inquiry that has since been released by the Government under the Freedom of Information Act and has pronounced it a fraud, and *not* the record that he had certified and submitted⁴². Furthermore, the President of the Court of Inquiry, following his departure from London with the record on 18 June 1967, his personal delivery of the record to officials in Washington, and his return to his regular duty post in Italy, informed the officer who had served as Counsel to the Court of Inquiry that the Court's record of its proceedings had been altered, in his presence, by civilian Government attorneys following its submission.⁴³

The Central Intelligence Agency issued an "interim" report on the attack, dated June 13, 1967 (five days after the attack and five days before the apparent completion of the Navy's abbreviated Court of Inquiry). The heavily redacted copy of the CIA's report that has been released to the public does not state a conclusion, but suggests that, based on the information available as of the date of the report, the Israeli forces may not have known that they were attacking an American ship.⁴⁴

⁴² Declaration of Ward Boston, Jr., Captain, JAGC, USN (Ret.), Exhibit 25

"18. Admiral Kidd also told me that he had been ordered to "put the lid" on everything having to do with the attack on USS Liberty. We were never to speak of it and we were to caution everyone else involved that they could never speak of it again.

19. I have no reason to doubt the accuracy of that statement as *I know that the Court of Inquiry transcript that has been released to the public is not the same one that I certified and sent off to Washington.*" [Emphasis added]

⁴³ Declaration of Ward Boston, Jr., Captain, JAGC, USN (Ret.), Exhibit 25

"16. I know from personal conversations I had with Admiral Kidd that President Lyndon Johnson and Secretary of Defense Robert McNamara ordered him to conclude that the attack was a case of "mistaken identity" despite overwhelming evidence to the contrary.

17. Admiral Kidd told me, after returning from Washington, D.C. that he had been ordered to sit down with two civilians from either the White House or the Defense Department, and rewrite portions of the court's findings."

⁴⁴ CIA Memorandum dated June 13, 1967 and attached as Exhibit 26.

Writing in his memoirs, Richard Helms, the Director of Central Intelligence at the time of the attack, explained that the Central Intelligence Agency undertook a "final" investigation after more evidence became available, and he offered the following information concerning the CIA's final finding:⁴⁵

"Israeli authorities subsequently apologized for the incident, but few in Washington could believe that the ship had not been identified as an American naval vessel. Later, an interim intelligence memorandum concluded the attack was a mistake and not made in malice against the U.S. . . . I had no role in the board of inquiry that followed, **or the board's finding that there could be no doubt that the Israelis knew exactly what they were doing in attacking the Liberty.** I have yet to understand why it was felt necessary to attack this ship or who ordered the attack." [Emphasis added]

Director Helms was not the only administration official who remained convinced that the attack was deliberate. In 1990, in his memoirs, Secretary of State Rusk observed:⁴⁶

"But I was never satisfied with the Israeli explanation. Their sustained attack to disable and sink *Liberty* precluded an assault by accident or some trigger-happy local commander. Through diplomatic channels we refused to accept their explanations. I didn't believe them then, and I don't believe them to this day. The attack was outrageous."

Similarly, Clark M. Clifford, Counsel to the President at the time of the attack, recalled:⁴⁷

"I do not know to this day at what level the attack on the *Liberty* was authorized and I think it is unlikely that the full truth will ever come out. Having been for so long a staunch supporter of Israel, I was particularly troubled by this incident; I could not bring myself to believe that such an action could have been authorized by Levi Eshkol. Yet somewhere inside the Israeli government, somewhere along the chain of command, something had gone terribly wrong--and then had been covered up. I never felt the Israelis made adequate restitution or explanation for their actions...."

⁴⁵ Helms, Richard and William Hood, *A Look over My Shoulder : A Life in the Central Intelligence Agency*, Random House, New York, 2003, p. 301

⁴⁶ Rusk, Dean, Daniel S. Papp (Ed.), *As I Saw It*, W.W.Norton, New York, 1990 p. 388

⁴⁷ Clifford, Clark, Richard Holbrooke *Counsel to the President: A Memoir*, Random House, New York, 1991, p. 224

The then-General Counsel for the Department of Defense, attorney Paul C. Warnke, opined:⁴⁸

"I found it hard to believe that it was, in fact, an honest mistake on the part of the Israeli air force units. I still find it impossible to believe that it was. I suspect that in the heat of battle they figured that the presence of this American ship was inimical to their interests, and that somebody without authorization attacked it."

The Executive Branch of the United States Government undertook no further review of the attack. Similarly, the United States Congress has never investigated the attack, making it the only attack on a United States Navy ship, involving significant loss of life, that has not been so investigated.⁴⁹

Compounding the harm done to survivors was the task given to them to bring all human remains and classified materials out of the research spaces that had been destroyed by the torpedo explosion. The survivors assigned to this task were further traumatized by having to secure the remains of their shipmates, men they knew and had lived and worked with.⁵⁰

In the years that followed the attack, almost all of the evidence pertaining to the attack remained, inexplicably, highly classified. Starting in the late 1970s, heavily redacted documents began to be released as a result of FOIA requests. To this day, many USS *Liberty* related documents, including the CIA report referenced by Director Helms, remain classified.

A number of individuals and groups, some directly in the employ of the Israeli government, others self-appointed, have attempted to convince the public that the attack on USS *Liberty* was but an "innocent mistake."⁵¹ In furtherance of this goal they have fabri-

⁴⁸ Who Says the *Liberty* Attack was Deliberate? Quoting Paul C. Warnke, USS *Liberty* Memorial Site, May 14, 2005 <http://www.uslliberty.org/supporters.htm>

⁴⁹ Moorer Commission, Formal Findings , Exhibit 27:

"9. That due to continuing pressure by the pro-Israel lobby in the United States, this attack remains the only serious naval incident that has never been thoroughly investigated by Congress; to this day, no surviving crewmember has been permitted to officially and publicly testify about the attack;"

⁵⁰ *Attack on a SIGINT Collector*, Exhibits 4-5152 and 4-64

⁵¹ *IDF History Report*, Exhibit 2-1

cated and repeated demonstrably false allegations – the most notable fabrication being that there have been “thirteen official investigations (including five Congressional investigations)” – all of which concluded that the attack was a “tragic error.” These allegations are wholly and demonstrably false.⁵² Worse, in some instances, deliberately falsified evidence has been proffered in support of this argument.⁵³

As a result of the public relations campaign undertaken on behalf of Israel, the USS *Liberty* survivors have been vilified for their assertions that the attack was deliberate and for their ongoing quest for justice. They are characterized as “neo-Nazis”, “anti-Semites”, and “conspiracy theorists” for wanting nothing more than an honest, open investigation of the attack on their ship and themselves.⁵⁴

“The tragic attack on the “*Liberty*” was an innocent mistake . . .”

⁵² AJ Cristol is the principal agent of the Israeli defense in the case of the attack on USS *Liberty*. He is the author of *The Liberty Incident*, a work written and published for the purpose of persuading the public that the Israeli attack on USS Liberty was just “an innocent mistake.” The demonstrable falsity of Cristol’s claims of official investigations having been undertaken, much less exonerating Israeli, is the subject of Terrence O’Keefe’s article attached as Exhibit 28.

⁵³ Please see Exhibit 36, a reply by the Israeli Defense Forces to an inquiry concerning what appear to be deliberately altered photos displayed in A. Jay Cristol’s *The Liberty Incident*, and represented as Israeli gun camera photos taken during the attack. This reply unequivocally states that other than a photo of Moshe Dayan, none of the remaining photos in *The Liberty Incident* were taken or provided by Israeli sources.

⁵⁴ Rather than attempt to refute the facts and arguments put forward by the *Liberty* survivors, Israel and its surrogates in the United States have resorted to baseless *ad hominem* attacks that are unworthy of inclusion in reasonable discourse. Typical of the vilification of the survivors of the attack and their supporters are the following representative comments:

“Most conspiracies hang together by a belabored psycho-social paranoid analysis. The conspiracy theory that Israel’s attack on the USS Liberty in 1967 was “intentional” is a slanderous fabrication. [Emphasis added]

...

“It was an accident; the attack was a case of friendly fire not unlike other such incidents; those who say otherwise do so only because they wish to hurt Israel and to demean Jews and the Jewish people; they associate with crackpots and known anti-Semites; those who tell this story are in league with holocaust deniers and other crackpots; . . . Liberty flew no flag and refused to identify herself when asked; Liberty attempted to flee when spotted; . . . ; Israel apologized and paid millions in damages ; the story told by Liberty survivors ‘has been discredited by the facts; Israel paid damages; the matter is closed.’” [Emphasis added]

...

This slander has a life given to it by anti-Israel conspiracy theorists who like the JFK assassination will never accept the facts in this case. Each new revelation from the State Department or NSA is denied by conspiracists [*sic*]. In that respect it isn’t much different than the blood libels or ZOG conspiracies. In point of fact it is just another variation on the “Jews killed Christ” theme. When haven’t the Jews been the world’s favorite scapegoat? If they can’t get these things, they’ll invent something else. And you can read about it on the interNUT, in both left and right wing mailing lists and newsgroups.

In 2003, an independent commission of highly regarded experts was created to look into the matter. The Commission consisted of Admiral Thomas H. Moorer, United States Navy (Ret.), Former Chairman, Joint Chiefs of Staff; General Raymond G. Davis, United States Marine Corps, (MOH), Former Assistant Commandant of The Marine Corps; Rear Admiral Merlin Staring, United States Navy (Ret.), Former Judge Advocate Gen-

USS Liberty Slanders, <http://pnews.org/art/ussliberty.shtml>

"He says "virulently *anti-Semitic organizations*" like the Liberty Lobby continue to "fan the fires" about the *Liberty* to smear Israel, when similar friendly-fire disasters have been all but forgotten, including the 1968 Pueblo, 1975 Mayagüez and 1987 Stark incidents. [Emphasis added]

Interview with A. J. Cristol, reported in the *Miami Herald*, July 15, 2002

AJC: The victims of the tragedy are typical of victims of friendly fire. They find it difficult to believe that they were wounded or their buddies were killed by mistake. In this case the victims have been imposed upon, used and abused by groups with their own agendas. First, are those who are on the Arab side of the Arab/Israeli conflict and who try to use the tragedy to drive a wedge into the otherwise excellent relationship between the United States and Israel. Next are those persons who are *anti-Semitic* or *anti-Israel*. And finally *there are the conspiracy buffs*. For the reasons indicated these three groups have continued to probe the wounds of the victims for their own purposes and are not concerned with healing or closure. [Emphasis added]

Interview with A.J. Cristol in the *Jerusalem Post*, July 10, 2003

The American Israel Public Affairs Committee (AIPAC) included the following comment in their July 29, 2002 review (<http://aipac.org/result.cfm?id=1358>) of the principal Israeli apologetics, *The Liberty Incident*.

"There are two groups of people making this argument, Cristol explains. The first is some of the Liberty survivors. Victims are seldom good judges in their own cases, he said. They find it hard to believe, which is always the case with friendly fire.

Members of the other group have less honorable motives. *Cristol says virulently anti-Semitic organizations and pro-Arab groups continue to fan the fires about the Liberty* to smear Israel, when similar friendly-fire incidents have been all but forgotten." [Emphasis added]

This vilification extends even to Internet newsgroups. Typical of such commentary is the following attack on USS Liberty survivor James M. Ennes, Jr., LCDR, USN Ret:

"Date: Mon, 05 May 2003 09:13:44 -0700
From: Victor Galindo <vandagg@earthlink.net>
User-Agent: Mozilla/5.0 (Windows; U; Windows NT 5.1; en-US; rv:1.0.1)
Gecko/20020823 Netscape/7.0 (nscd2)
X-Accept-Language: en-us, en
MIME-Version: 1.0
To: James Ennes <jim@ussliberty.org> [Officer aboard USS *Liberty* during the attack and author of *Assault on the Liberty*]
Subject: Yes

Yes, you are an *anit-Semitic no good bastard*. I was aboard American ships off Sicily during WWII and got the hell blasted by bombers -- USA bombers. This kind of thing occurs in every war. Israel had no motive. The fault lies with the U.S.A. for planting a ship in an area of war. Again, you are a *anti-Semitic Nazi bastard. Drop dead.*" [Emphasis added]

eral Of The Navy; and Ambassador James Akins (Ret.), Former United States Ambassador to Saudi Arabia.

The “Moorer Commission” (Chaired by Adm. Moorer) investigated the attack and made the following findings:

“We, the undersigned, having undertaken an independent investigation of Israel's attack on USS Liberty, including eyewitness testimony from surviving crewmembers, a review of naval and other official records, an examination of official statements by the Israeli and American governments, a study of the conclusions of all previous official inquiries, and a consideration of important new evidence and recent statements from individuals having direct knowledge of the attack or the cover up, hereby find the following:

1. That on June 8, 1967, after eight hours of aerial surveillance, Israel launched a two-hour air and naval attack against USS Liberty, the world's most sophisticated intelligence ship, inflicting 34 dead and 173 wounded American servicemen (a casualty rate of seventy percent, in a crew of 294);
2. That the Israeli air attack lasted approximately 25 minutes, during which time unmarked Israeli aircraft dropped napalm canisters on USS Liberty's bridge, and fired 30mm cannons and rockets into our ship, causing 821 holes, more than 100 of which were rocket-size; survivors estimate 30 or more sorties were flown over the ship by a minimum of 12 attacking Israeli planes which were jamming all five American emergency radio channels;
3. That the torpedo boat attack involved not only the firing of torpedoes, but the machine-gunning of Liberty's firefighters and stretcher-bearers as they struggled to save their ship and crew; the Israeli torpedo boats later returned to machine-gun at close range three of the Liberty's life rafts that had been lowered into the water by survivors to rescue the most seriously wounded;
4. That there is compelling evidence that Israel's attack was a deliberate attempt to destroy an American ship and kill her entire crew; evidence of such intent is supported by statements from Secretary of State Dean Rusk, Undersecretary of State George Ball, former CIA director Richard Helms, former NSA directors Lieutenant General William Odom, USA (Ret.), Admiral Bobby Ray Inman, USN (Ret.), and Marshal Carter; former NSA deputy directors Oliver Kirby and Major General John Morrison, USAF (Ret.); and former Ambassador Dwight Porter, U.S. Ambassador to Lebanon in 1967;
5. That in attacking USS Liberty, Israel committed acts of murder against American servicemen and an act of war against the United States;
6. That fearing conflict with Israel, the White House deliberately prevented the U.S. Navy from coming to the defense of USS Liberty by recalling Sixth Fleet military rescue support while the ship was under attack; evidence of the recall of rescue aircraft is supported by statements of Captain Joe Tully, Commanding Officer of the aircraft carrier USS Saratoga, and Rear Admiral Lawrence Geis, the Sixth Fleet carrier division com-

mander, at the time of the attack; never before in American naval history has a rescue mission been cancelled when an American ship was under attack;

7. That although Liberty was saved from almost certain destruction through the heroic efforts of the ship's Captain, William L. McGonagle (MOH), and his brave crew, surviving crewmembers were later threatened with "court-martial, imprisonment or worse" if they exposed the truth; and were abandoned by their own government;

8. That due to the influence of Israel's powerful supporters in the United States, the White House deliberately covered up the facts of this attack from the American people;

9. That due to continuing pressure by the pro-Israel lobby in the United States, this attack remains the only serious naval incident that has never been thoroughly investigated by Congress; to this day, no surviving crewmember has been permitted to officially and publicly testify about the attack;

10. That there has been an official cover-up without precedent in American naval history; the existence of such a cover-up is now supported by statements of Rear Admiral Merlin Staring, USN (Ret.), former Judge Advocate General of the Navy; and Captain Ward Boston, USN, (Ret.), the chief counsel to the Navy's 1967 Court of Inquiry of Liberty attack;

11. That the truth about Israel's attack and subsequent White House cover-up continues to be officially concealed from the American people to the present day and is a national disgrace;

12. That a danger to our national security exists whenever our elected officials are willing to subordinate American interests to those of any foreign nation, and specifically are unwilling to challenge Israel's interests when they conflict with American interests; this policy, evidenced by the failure to defend USS Liberty and the subsequent official cover-up of the Israeli attack, endangers the safety of Americans and the security of the United States.

WHEREUPON, we, the undersigned, in order to fulfill our duty to the brave crew of USS Liberty and to all Americans who are asked to serve in our Armed Forces, hereby call upon the Department of the Navy, the Congress of the United States and the American people to immediately take the following actions:

FIRST: That a new Court of Inquiry be convened by the Department of the Navy, operating with Congressional oversight, to take public testimony from surviving crewmembers; and to thoroughly investigate the circumstances of the attack on the USS Liberty, with full cooperation from the National Security Agency, the Central Intelligence Agency and the military intelligence services, and to determine Israel's possible motive in launching said attack on a U.S. naval vessel;

SECOND: That every appropriate committee of the Congress of the United States investigate the actions of the White House and Defense Department that prevented the rescue of the USS Liberty, thereafter threatened her surviving officers and men if they exposed the truth, and covered up the true circumstances of the attack from the American people; and

THIRD: That the eighth day of June of every year be proclaimed to be hereafter known as

USS LIBERTY REMEMBRANCE DAY, in order to commemorate USS Liberty's heroic crew; and to educate the American people of the danger to our national security inherent in any passionate attachment of our elected officials for any foreign nation.

We, the undersigned, hereby affix our hands and seals, this 22nd day of October, 2003.

Admiral Thomas H. Moorer, USN, Ret.
Former Chairman, Joint Chiefs of Staff

General of Marines Raymond G. Davis, USMC, MOH
Former Commandant of the United States Marine Corps

Merlin Staring
Rear Admiral Merlin Staring, USN, Ret.,
Former Judge Advocate General of the Navy,

James Akins
Ambassador James Akins, Ret.,
Former United States Ambassador to Saudi Arabia"

The federal criminal code makes special provision for the prosecution of war crimes whether inside or outside the United States, committed against United States armed forces personnel:

"18 United States Code, Sec. 2441. - War crimes

(a) Offense. -

Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) Circumstances. -

The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) Definition. -

As used in this section the term "war crime" means any conduct -

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18

October 1907;

(3) which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians."

The Geneva Convention (1949) defines the term "grave breach" as follows:

"Article 51

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

Even if there were no special provision authorizing the prosecution of war crimes, the provisions of 18 U.S.C. Sec. 1114 compel the prosecution of those who kill or attempt to kill United States armed forces personnel in the performance of their duties.

"Sec. 1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished -

- (1) in the case of murder, as provided under section 1111;
- (2) in the case of manslaughter, as provided under section 1112; or
- (3) in the case of attempted murder or manslaughter, as provided in section 1113."

The prohibition against attacking neutrals on the high seas is unconditional. It does not allow for mistake. The belligerent force, when on the high seas, *must* verify that their proposed target is not a neutral and is, in fact, a co-belligerent. This provision very sen-

sibly attempts to prevent the use of deadly force by mistake.⁵⁵ The United States of America has long and vigorously asserted the right of its warships to transit the high seas, free from molestation by belligerents of wars to which the United States is not a party.⁵⁶

⁵⁵ United States Navy, *Commander's Handbook on the Law of Naval Operations*, (NWP 1-14M,) Chapter 5 Principles and Sources of the Law of Armed Conflict, Exhibit 29:

"5.2 General Principles of the Law of Armed Conflict

The law of armed conflict seeks to prevent unnecessary suffering and destruction by controlling and mitigating the harmful effects of hostilities through minimum standards of protection to be accorded to "combatants" and "noncombatants" and their property. . . . To that end, the law of armed conflict provides that:

1. Only that degree and kind of force, not otherwise prohibited by the law of armed conflict, required for the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources may be applied.
2. The employment of any kind or degree of force not required for the purpose of the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources, is prohibited."

⁵⁶ In a radio address to the nation on the evening of September 11, 1941, following an unprovoked attack by a German U-boat on USS Greer while in international waters, President Roosevelt explained (Exhibit 38):

"The United States destroyer, when attacked, was proceeding on a legitimate mission.

If the destroyer was visible to the submarine when the torpedo was fired, then the attack was a deliberate attempt by the Nazis to sink a clearly identified American warship. On the other hand, if the submarine was beneath the surface and, with the aid of its listening devices, fired in the direction of the sound of the American destroyer without even taking the trouble to learn its identity-as the official German communiqué would indicate-then the attack was even more outrageous. For it indicates a policy of indiscriminate violence against any vessel sailing the seas, belligerent or non-belligerent.

This was piracy-legally and morally. It was not the first nor the last act of piracy which the Nazi government has committed against the American flag in this war. Attack has followed attack.

The Hitler government, in defiance of the laws of the sea and of the recognized rights of all other nations, has presumed to declare, on paper, that great areas of the seas -even including a vast expanse lying in the Western Hemisphere-are to be closed, and that no ships may enter them for any purpose, except at peril of being sunk. Actually they are sinking ships at will and without warning in widely separated areas both within and far outside of these far-flung pretended zones.

Generation after generation America has battled for the general policy of the freedom of the seas. That policy is a very simple one, but a basic, fundamental one. It means that no nation has the right to make the broad oceans of the world at great distances from the actual theater of land war unsafe for the commerce of others.

That has been our policy, proved time and time again, in all our history."

Of particular relevance to this matter, the *Geneva Convention (1949)* provides:

“REPRESSION OF ABUSES AND INFRACTIONS

Article 51

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Article 52

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.”

In the instant matter, Israel freely acknowledged that USS *Liberty* was a neutral ship in international waters.⁵⁷ Israel also admitted that the attack was deliberate and made with the intent to sink the ship and crew.⁵⁸ Israel has thus explicitly admitted the essential elements of a violation of Article 1 of the *Hague Convention on Naval Warfare*. Israel has further admitted the essential elements required to establish a “grave breach” as that term is defined in the *Geneva Convention (1949)*.

The Nürnberg War Crimes Tribunal established certain principles that were later adopted by all members of the United Nations.⁵⁹ Of particular relevance is Principal VI:

⁵⁷ *Ram Ron Report*, Exhibit 8-3

“After identifying the ship on Janes’ (The Fleet’s manual – Exhibit 1) and based on detailed investigation by the pilot – the identification of the ship was determined to be the US Navy ship “Liberty” (formerly supply ship) of an 18 knot speed.”

See also, *IDF History Report*, p. 14 (map) Exhibit 2-14. This document is a map, prepared by the IDF, that shows the territorial limits of Egypt and Israel, as well as USS *Liberty*’s track (well outside all claimed territorial seas) on the day of June 8, 1967.

⁵⁸ *Ram Ron Report*, Exhibit 8-5:

“Lieut. Col. Shmuel testifies that the Air Force was ordered to attack the ship after it had been identified as a warship by the Naval Force. From the evidence submitted by the Naval Force, this point lacks clarity and it seems that the order given was to attack the ship after its identification as a warship and it is not clear whether the intention was that the absolute identification as a warship was to be made by an additional identification by the pilots, or that the identification as a warship by the Naval Force based on the ship’s speed was to suffice.”

⁵⁹ Exhibit 37: *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*

“Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

. . .

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war, of persons on the Seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.”

It is well settled that homicides resulting from the accused committing an act inherently dangerous to others and showing a wanton disregard of human life may be charged as murder:

“Homicides prosecuted under Article 118(3) are those unlawful killings which result from an accused's committing "an act inherently dangerous to others and" showing "a wanton disregard of human life." The accused must also know that death or great bodily harm was a "probable consequence" of his conduct. Not surprisingly, intentional homicides under Article 118(2) also generally involve death as a "probable consequence"; and they are most often committed by acts which are "inherently dangerous," particularly to the deceased, and show "a wanton disregard" for the victim (*i.e.*, killing by gunfire or other dangerous weapon).

We stated previously that, for unpremeditated murder under Article 118(3), Congress enacted the rule that murder by an act inherently dangerous to others requires 'a wanton disregard of human life' in general, without the actions of the accused "being aimed at anyone in particular."

U.S. v. Berg, 31 M.J. 38, 39, 40 (CMA,1990).

This is not a case of first impression. Precedent exists⁶⁰ for the finding that this type of attack represents a grave breach of the Laws of War.⁶¹

⁶⁰ The following argument was made by the Allied prosecutor at the Nuremberg war crimes trial of German Admiral Raeder, Exhibit 30:

“I shall submit evidence to the Tribunal to establish that, in fact, the *Athenia* was sunk by the German U-boat U-30. So unjustifiable was the torpedoing of the *Athenia*, however, that the

German Navy embarked upon a course of falsification of their records and on other dishonest measures, in the hope of hiding this guilty secret. And for their part, as the Tribunal has seen, the Nazi propagandists indulged in their favorite falsehood of seeking to shift the responsibility to the British.

The captain of the U-30, Oberleutnant Lemp, was later killed in action; but some of the original crew of the U-30 have survived to tell the tale, and they are now prisoners of war. And so that the truth of this episode may be placed beyond a peradventure, I submit to the Tribunal an affidavit by a member of the crew of the U- 30, as to the sinking of the Athenia and as to one aspect of the attempt to conceal the true facts.

. . .

Doenitz' part in the Athenia episode is described in an affidavit which he has sworn, which is Document D-638, Exhibit GB-220, at Page 102 of the document book. The affidavit was sworn in English, and I invite the Tribunal to look at it and observe the addition in Doenitz' handwriting of four words at the end of the affidavit, the significance of which will be seen in a moment. me Defendant Doenitz states:

"U-30 returned to harbor about mid- September. I met the captain, Oberleutnant Lemp, on the lockside at Wilhelmshaven, as the boat was entering harbor, and he asked permission to speak to me in private. I noticed immediately that he was looking very unhappy and he told me at once that he thought he was responsible for the sinking of the Athenia in the North Channel area. In accordance with my previous instructions he had been keeping a sharp lookout for possible armed merchant cruisers in the approaches to the British Isles, and had torpedoed a ship he afterwards identified as the Athenia from wireless broadcasts, under the impression that she was an armed merchant cruiser on patrol. I had never specified in my instructions any particular type of ship as armed merchant cruiser nor mentioned any names of ships. I dispatched Lemp at once by air to report to the SKL at Berlin; in the meantime, I ordered complete secrecy as a provisional measure. Later in the same day or early on the following day, I received a verbal order from Kapitan zur See Fricke" - who was head of the operations division of the naval war staff "that:

"Firstly, the affair was to be kept a total secret.

"Secondly, the OKM considered that a court-martial was not necessary as they were satisfied that the captain had acted in good faith.

"Thirdly, political explanations would be handled by the OKM.

"I had had no part whatsoever in the political events in which the Fuehrer claimed that no U-boat had sunk the Athenia.

"After Lemp returned to Wilhelmshaven from Berlin, I interrogated him thoroughly on the sinking and formed the impression that, although he had taken reasonable care, he had still not taken sufficient precaution to establish fully the identity of the ship before attacking. I had previously given very strict orders that all merchant vessels and neutrals were to be treated according to naval prize law before the occurrence of this incident. I accordingly placed him under cabin arrest, as I felt certain that a court-martial would only acquit him and would entail unnecessary publicity" and then Doenitz had added the words "and loss of time." [Emphasis added]

⁶¹ The International War Crimes Tribunal rendered the following verdict against Admiral Raeder:

Accordingly it is established, *prima facie*, that Israel was guilty of the commission of the war crime of attacking a neutral vessel in neutral waters as a consequence of its attack on USS *Liberty*.

USS *Liberty* survivors, through sworn statements, have established that the Israeli torpedo boats shot at rescuers and firefighters on the deck of the ship. They have further established that the same torpedo boats shot at USS *Liberty*'s life rafts, after the rafts had been put over the side of the ship into the sea for use by shipwrecked survivors.⁶²

There also exists *prima facie* evidence that Israeli forces committed additional separate war crimes by firing on the wounded and their rescuers, as well as subsequently firing into the life rafts.

War Crimes, Exhibit 31

Raeder is charged with war crimes on the high seas. The Athenia, an unarmed British passenger liner, was sunk on 3 September 1939, while outward bound to America. The Germans 2 months later charged that Mr. Churchill deliberately sank the Athenia to encourage American hostility to Germany. In fact, it was sunk by the German U-Boat U-30. Raeder claims that an inexperienced

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U-Boat commander sank it in mistake for an armed merchant cruiser, . . .

The most serious charge against Raeder is that he carried out unrestricted submarine warfare, including sinking of unarmed merchant ships, of neutrals, non-rescue and machine-gunning of survivors, contrary to the London Protocol of 1936. The Tribunal makes the same finding on Raeder on this charge as it did as to Doenitz, which has already been announced, up until 30 January 1943 when Raeder retired.

. . .

Conclusion

The Tribunal finds that Raeder is *guilty* on Counts One[Crimes against Peace], Two and Three [War Crimes]. [Emphasis added]

⁶² Please see attached Exhibit 11, Declaration of Lloyd Painter and Exhibit 10, Declaration of Glenn Oliphant. Also, see attached Exhibit 32, National Security Agency, NSA Archives, Accession No. 45981, U.S.S. *Liberty* Correspondence and Messages , 1965-1968. Secret; Savin. SIGINT Readiness Bravo "Crayon" Report Nr. 2149. *Aftermath of Israeli Attack on USS Liberty, 8 June 1967* which contains indirect confirmation of the destruction of Liberty's inflated life rafts as shown in the following intercepted transmission , Exhibit 32:

[Time 1310Z] "From behind it (*Liberty*) several uninflated boats were seen."

The concerns of an Israeli whitewash first articulated by Secretary of State Rusk⁶³ and later echoed by Undersecretary of State Battle⁶⁴ turned out to be prophetic. In direct violation of Article 52 of the Geneva Convention⁶⁵, the Israeli Defense Forces absolved

⁶³ Diplomatic Note From Secretary of State Rusk to the Israeli Ambassador National Archives and Records Administration, RG 59, Central Files 1967-69, POL 27 ARAB-ISR, Exhibit 20:

"While the Ambassador of Israel has informed Secretary of State that "the Government of Israel is prepared to make amends for the tragic loss of life and material damage," *the Secretary of State wishes to make clear that the United States Government expects the Government of Israel also to take the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a State.* [Emphasis added]

⁶⁴ Draft Memorandum From the Assistant Secretary of State for Near Eastern and South Asian Affairs (Battle) to the Under Secretary of State (Katzenbach), Exhibit 33:

(Source: Washington National Records Center, OSD Files: FRC 330 72 A 2468, Middle East, 385.3. Confidential. Drafted by Wehmeyer; cleared by Macomber, Deputy Legal Adviser Murray J. Belman, Assistant Secretary for Public Affairs Dixon Donnelley, and Eugene Rostow. The draft, which is a copy sent to the Department of Defense for clearance, is filed with an August 22 letter from Nitze to Representative George H. Mahon of Texas, sending him on a confidential basis a copy of the report of the judge who presided over the preliminary Israeli inquiry into the attack on the *Liberty*. Also attached are a note to Nitze stating that Defense clearance on Battle's memorandum was requested, an August 21 memorandum from Nitze's military assistant, Commander C.A.H. Trost, USN, to Warnke saying that Nitze had no objection to the proposal but wanted Warnke to look at it, and an August 21 memorandum from Warnke to Nitze questioning recommendation (6) but otherwise approving the proposal. A handwritten comment by Hoopes on Warnke's memorandum suggested deleting recommendation (7) but otherwise concurred.)

Washington, August 18, 1967.

SUBJECT

The "*Liberty*"--Handling of Israeli Inquiry
Report and Release of Diplomatic Correspondence

"*We cannot, therefore, accept the report as exonerating the Israeli Government from our expectation that Israel will take the disciplinary measures which international law requires in the event of wrongful conduct by the military personnel of a state.* Neither had the U.S. received any assurance that Israel has issued instructions to ensure that U.S. personnel will not again be endangered by the wrongful actions of Israeli military personnel." [Emphasis added]

⁶⁵ Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, August 12, 1949 ("Geneva Convention (II)")

Article 52

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

ISRAEL DEFENSE FORCES, Preliminary Inquiry File 1/67, PRELIMINARY INQUIRY
Before: Sgan-Aluf I. Yerushalmi, Examining Judge, Exhibit 21

July 21, 1967

DECISION

themselves of any wrongdoing, including criminal negligence, involving their attack on *USS Liberty*. When provided with a copy of the Israeli report, NSA Deputy Director Louis Tordella wrote "A nice whitewash for a group of ignorant, stupid and inept [epithet redacted]" on the cover of his copy.⁶⁶ In that Israel has abdicated its responsibility under international law to investigate and bring the wrongdoers to justice, the task falls to the government of the aggrieved parties to act on their behalf.

Conclusion

The *USS Liberty* Veteran's Association has established, *prima facie*, the commission of war crimes by the state of Israel against US military personnel and civilians. These Americans volunteered to serve their country. They followed all orders given to them. In the course of following those orders, they were suddenly and deliberately attacked by naval and air forces of the state of Israel and their country did absolutely nothing to protect them or seek justice on their behalf..

The failure of the United States government to undertake a complete investigation of the Israeli attack on *USS Liberty* has resulted in grievous harm to the surviving victims, as well as to the families of all crewmembers. Equally serious, this failure has resulted in an indelible stain upon the honor of the United States of America. It has sent a signal to America's serving men and women that their welfare is always subordinate to the interests of a foreign state. The only conceivable reason for this failure is the political decision to put the interests of Israel ahead of those of American servicemen, employees, and veterans.⁶⁷

" . . . Yet I have not discovered any deviation from the standard of reasonable conduct which would justify the committal [*sic*] of anyone for trial. In view of what has been said above, I hold, that there is no sufficient amount of *prima facie* evidence, justifying committing anyone for trial."

⁶⁶ Assistant Secretary Hughes sent a copy of the decision to NSA Director Carter on August 22. In a handwritten note of August 26, NSA Deputy Director Louis W. Tordella commented, "A nice whitewash for a group of ignorant, stupid and inept [epithet redacted]." (National Security Agency, Center for Cryptologic History Historical Collection, Series VII, Crisis Files, Box 16)

⁶⁷ Letter to editor by survivor Harold "Gene" Six, Riverside, California, Press-Enterprise, March 1, 1996, Exhibit 34:

"President Clifton and other elected officials have come out and condemned Castro and Cuba for shooting down two aircraft flown by Cuban revolutionaries that may or may not have violated Cuban airspace. Yet on

Finally, the fact that the Israeli government and its surrogates in the United States have worked so long and hard to prevent an inquiry itself speaks volumes as to what such an inquiry would find.

The USS Liberty Veterans Association, Inc. respectfully insists that the Secretary of the Army convene an investigatory body to undertake the complete investigation that should have been carried out thirty-eight years ago.

June 8, 1967, When the Israeli defense forces attacked an American naval vessel --USS Liberty AGTR-5 -- that was and always had been in international waters, nothing was said or done by the US government.

This attack resulted in the deaths of 34 American sailors and the wounding of 171 others. Yet even today the survivors of the attack cannot get their elected officials to investigate the attack. An attack that was deliberate. An attack that violated international law. An attack that violated provisions of the Geneva Convention, in other words war crimes. An attack where provisions of the Uniform Code of Military Justice were violated when American naval aircraft sent to the aid of the USS Liberty were called back not once but twice by someone at the White House.

Do American lives mean so little to our elected officials that they will use the dead bodies of 18-year old American sailors as stepping stones on their way to office?"

Statement by survivor Ken Ecker, Exhibit 35

"Immediately following the attack I was threatened with court-martial if I discussed the incident with the press or anyone else. One of the warnings was also not to discuss the attack even with my immediate family or friends. In my case these warnings were repeated upon my transfer from each duty station I left along with the standard security clearance de-briefing. I was also periodically taken aside and reminded of the original threat even when not being transferred. Though never told the reason for these one on one "advisory" sessions, I personally believe they were the result of some action that raised the possibility of further publicity that our government wanted to suppress.

I want no personal recognition, but I will not rest until the 34 brave men that sacrificed their lives are finally given the long overdue honor they so justly deserve. Hopefully with the help of all concerned this long denied justice will be forthcoming in the not so distant future."

Statement of survivor James M. Ennes, Jr., Exhibit 12

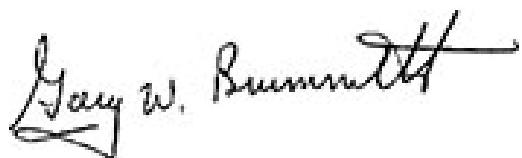
"Yet despite these things a few Americans seem to accept the preposterous claim that the attack was a mistake and that firing stopped with the torpedo explosion. One can accept and understand this attitude from an Israeli, as he would have a natural tendency to believe his country's version of events and to disbelieve contrary versions -- especially since he has no personal experience to draw upon. But how can an American disbelieve the virtually identical eyewitness reports of scores of surviving fellow Americans and accept instead the undocumented claims of the foreign power that tried to kill them? That is very difficult to understand or to accept.

The typical Israeli reaction is that we are liars or antiSemites, which of course we are not. We are American sailors honestly reporting an act of treachery at sea. At the very least we deserve your courtesy and understanding"

Respectfully submitted on behalf of the USS *Liberty* Veterans Association, Inc., on
this, the thirty-eighth anniversary of the Israeli attack on their ship.

June 8, 2005

BY



Gary W. Brummett, President and
Member of the Board of Directors



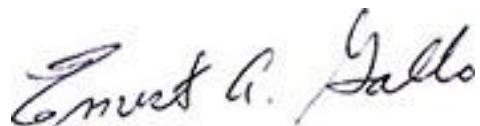
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Member of the Board of Directors



Maurice Shafer
Member of the Board of Directors



Glenn Oliphant
Member of the Board of Directors



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James R. Gotcher
General Legal Counsel